



# PUBLIC NOTICE

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April 14, 2005

## AUCTION OF FM BROADCAST CONSTRUCTION PERMITS SCHEDULED FOR NOVEMBER 1, 2005

### COMMENT SOUGHT ON RESERVE PRICES OR MINIMUM OPENING BIDS AND OTHER AUCTION PROCEDURES FOR AUCTION NO. 62

Comments Due: April 29, 2005

Reply Comments Due: May 6, 2005

#### Report No. AUC-05-62-A (Auction No. 62)

By this Public Notice, the Wireless Telecommunications Bureau (“WTB”) and the Media Bureau (“MB”) (collectively referred to as the “Bureaus”) announce the auction of certain FM broadcast construction permits (Auction No. 62) to commence on November 1, 2005. As discussed in greater detail herein, the Bureaus propose that Auction No. 62 be composed of 173 construction permits in the FM broadcast service as listed in Attachment A.<sup>1</sup> The construction permits to be auctioned include 143 new FM allotments, and 30 unsold FM construction permits from Auction No. 37.<sup>2</sup>

Attachment A lists vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 C.F.R. § 73.202(b), pursuant to the Commission’s established rulemaking procedures, designated for use in the indicated community. Pursuant to the policies established in the *Broadcast First Report and Order*, applicants may apply for any vacant FM allotment, as specified in Attachment A.<sup>3</sup> Applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the

<sup>1</sup> The Bureaus have before them waiver requests from (i) Wildcat Communications LLC, (ii) Bigglesworth Broadcasting, LLC, (iii) Glory Communications, Inc., and (iv) Talkline Communications. These four bidders from Auction No. 37 assert that they should be offered specified construction permits as a second highest bidder after the highest bidder withdrew prior to the close of the auction. These waiver requests remain pending before the Bureaus.

<sup>2</sup> “FM Broadcast Construction Permits Auction Closes, Auction No. 37 Winning Bidders Announced; Payment and Application Deadlines Established,” *Public Notice*, DA 04-3694 (WTB/MB Dec. 1, 2004).

<sup>3</sup> See Implementation of Section 309(j) of the Communications Act – Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, *First Report and Order* in MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, 13 FCC Rcd 15920, 15961, 15974-15975 (1998) (“*Broadcast First Report and Order*”), *on recon.*, *Memorandum Opinion and Order*, 14 FCC Rcd 8724 (1999), *on further recon.*, *Memorandum Opinion and Order*, 14 FCC Rcd 14521(1999).

construction permit for the FM allotment will be awarded by competitive bidding procedures.<sup>4</sup> The reference coordinates for each vacant FM allotment are also listed in Attachment A.<sup>5</sup>

Auction No. 62 will use the FCC's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"), an extensive redesign of the previous auction application and bidding systems. The redesign includes FCC Form 175 application enhancements such as discrete data elements in place of free-form exhibits and improved data accuracy through automated checking of FCC Form 175 applications. Enhancements have also been made to the FCC Form 175 application search function. The auction bidding system has also been updated for easier navigation, customizable results, and improved functionality. More information about ISAS is available via the "About ISAS" link on the Auctions web page at <http://wireless.fcc.gov/auctions/>.

Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed . . . before issuance of bidding rules, to permit notice and comment on proposed auction procedures . . ."<sup>6</sup> Consistent with the provisions of Section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureaus, under existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction.<sup>7</sup> We therefore seek comment on the following issues relating to Auction No. 62.

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<sup>4</sup> When two or more short-form applications (FCC Form 175) are accepted for filing within an MX Group, mutual exclusivity exists for auction purposes. *Broadcast First Report and Order*, 13 FCC Rcd at 15978-80, ¶¶ 149-154. *See also* Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-252, *Second Report and Order*, 9 FCC Rcd 2348, 2376, ¶ 165 (1994) ("*Second Report and Order*"). Once mutual exclusivity exists for auction purposes, even if only one applicant within an MX Group submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted, but fails to timely submit an upfront payment, will retain its place in the MX Group but, having purchased no bidding eligibility, will not be eligible to bid.

<sup>5</sup> With regard to the FM service, in the *Broadcast First Report and Order*, the Commission gave applicants the opportunity to submit a set of preferred site coordinates as an alternative to the reference coordinates for the vacant FM allotment upon which they intend to bid. Detailed instructions for specifying preferred site coordinates will be given in a future Public Notice announcing the procedures for Auction No. 62, which will provide guidelines for completing FCC Form 175 and exhibits. *See Broadcast First Report and Order*, 13 FCC Rcd at 15974 and n.153.

<sup>6</sup> 47 U.S.C. § 309(j)(3)(E).

<sup>7</sup> *See* Amendment of Part 1 of the Commission's Rules — Competitive Bidding Procedures, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 448 ¶ 124-125 (1997) ("*Part 1 Third Report and Order*") (directing the WTB to seek comment on specific mechanisms related to day-to-day auction conduct including, for example, the structure of bidding rounds and stages, establishment of minimum opening bids or reserve prices, minimum acceptable bids, initial maximum eligibility for each bidder, activity requirements for each stage of the auction, activity rule waivers, criteria for determining reductions in eligibility, information regarding bid withdrawal and bid removal, stopping rules, and information relating to auction delay, suspension or cancellation). *See also Broadcast First Report and Order*, 13 FCC Rcd at 15967-15968 (consistent with the Part 1 rules, the Commission delegated authority to the Mass Media Bureau [now Media Bureau] to seek comment on and establish an appropriate auction design methodology prior to the start of each broadcast auction).

## I. AUCTION STRUCTURE

### A. Simultaneous Multiple-Round Auction Design

We propose to award all construction permits included in Auction No. 62 in a simultaneous multiple-round auction. As described further below, this methodology offers every construction permit for bid at the same time with successive bidding rounds in which bidders may place bids. That is, bidding will remain open on all construction permits until bidding stops on every construction permit. We seek comment on this proposal.<sup>8</sup>

### B. Upfront Payments and Bidding Eligibility

The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each FM construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar spectrum.<sup>9</sup> As described further below, the upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on FM construction permits. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction.<sup>10</sup> With these guidelines in mind, we propose the schedule of upfront payments for each construction permit as set forth in Attachment A to this Public Notice. We seek comment on this proposal.

We further propose that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial bidding eligibility. Each FM construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A, on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. In order to bid on a construction permit, qualified bidders must have an eligibility level that meets the number of bidding units assigned to that construction permit. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the **maximum** number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.<sup>11</sup> We seek comment on this proposal.

### C. Activity Rules

In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity will be the sum of the bidding units associated with the construction permits upon which it places a bid during the current round and the bidding units associated with the construction permits upon which it holds provisionally winning bids. Bidders are required to be active on

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<sup>8</sup> See *Second Report and Order*, 9 FCC Rcd at 2378-79 ¶¶ 171-176 for a general discussion of competitive bidding design.

<sup>9</sup> See *Broadcast First Report and Order*, 13 FCC Rcd at 15971 ¶ 134.

<sup>10</sup> *Second Report and Order*, 9 FCC Rcd at 2378-79.

<sup>11</sup> See Section II.D. "Provisionally Winning Bids," below.

a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly eliminating the bidder from further bidding in the auction.

We propose to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. We propose that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately twenty percent or below for three consecutive rounds of bidding. However, we further propose that the Bureaus retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureaus will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of construction permits (as measured in bidding units) on which there are new bids,<sup>12</sup> the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

For Auction No. 62, we propose the following activity requirements:

**Stage One:** In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on construction permits representing at least 75 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by four-thirds (4/3).

**Stage Two:** In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

We seek comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

#### **D. Activity Rule Waivers and Reducing Eligibility**

Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

The FCC Auction System assumes that bidders with insufficient activity would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) the bidder has no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. **If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.**

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<sup>12</sup> For example, when monitoring activity for determining when to change stages, we may consider the percentage of bidding units of the construction permits receiving new provisionally winning bids, excluding any FCC-held construction permits.

A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the “reduce eligibility” function in the FCC Auction System. In this case, the bidder’s eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the “apply waiver” function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder’s eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids or withdrawals will not keep the auction open. The submission of a proactive waiver cannot occur after a bid has been submitted in a round and will preclude a bidder from placing any bids later in that round. **Applying a waiver is irreversible; once a proactive waiver is submitted that waiver cannot be unsubmitted, even if the round has not yet closed.**

We propose that each bidder in Auction No. 62 be provided with three activity rule waivers that may be used at the bidder’s discretion during the course of the auction as set forth above. We seek comment on this proposal.

#### **E. Information Relating to Auction Delay, Suspension, or Cancellation**

For Auction No. 62, we propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding.<sup>13</sup> In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

## **II. BIDDING PROCEDURES**

### **A. Round Structure**

The Commission will conduct Auction No. 62 over the Internet. Alternatively, telephonic bidding will also be available. The toll-free telephone number for telephonic bidding will be provided to bidders.

The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results. Details on viewing round results, including the location and format of downloadable round results files will be included in the same public notice.

The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders’ need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review

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<sup>13</sup> 47 C.F.R. § 1.2104(i).

periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

## **B. Reserve Price or Minimum Opening Bid**

Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid amount when FCC licenses or construction permits are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest.<sup>14</sup> Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of minimum opening bid amounts and/or reserve price prior to the start of each auction of broadcast construction permits.<sup>15</sup>

Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid amount, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

In light of Section 309(j)'s requirements, the Bureaus propose to establish minimum opening bid amounts for Auction No. 62. The Bureaus believe a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool.<sup>16</sup>

For Auction No. 62, the proposed minimum opening bids were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data and recent broadcast transactions. The specific minimum opening bid for each construction permit available in Auction No. 62 is set forth in Attachment A of this Public Notice. We seek comment on this proposal.

If commenters believe that these minimum opening bid amounts will result in substantial numbers of unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts, we particularly seek comment on such factors as the potential value of the spectrum being auctioned including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility and other relevant factors that could reasonably have an impact on valuation of the broadcast spectrum. We also seek comment on whether, consistent with Section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

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<sup>14</sup> 47 U.S.C. § 309(j) (as amended by the Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997), Section 3002(a)). The Commission's authority to establish a reserve price or minimum opening bid is set forth in 47 C.F.R. § 1.2104(c) and (d).

<sup>15</sup> See *Broadcast First Report and Order*, 13 FCC Rcd at 15971 ¶ 134; *Part 1 Third Report and Order*, 13 FCC Rcd at 454-55 ¶ 141.

<sup>16</sup> See, e.g., "Auction of FM Broadcast Construction Permits Scheduled for November 3, 2004, Auction No. 37," *Public Notice*, 19 FCC Rcd 10570 (2004); "Closed Broadcast Auction – Notice and Filing Requirements for Auction of AM, FM, TV, LPTV and FM and TV Translator Construction Permits – Minimum Opening Bids and Other Procedural Issues, Auction No. 25," *Public Notice*, 14 FCC Rcd 10632 (1999).

### C. Minimum Acceptable Bid Amounts and Bid Increments

In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts.<sup>17</sup> The FCC Auction System interface will list the nine acceptable bid amounts for each construction permit.

The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount for that construction permit will be equal to the amount of the provisionally winning bid plus an additional amount. The minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage — *e.g.*, if the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) \* (1.10), rounded. We will round the result using our standard rounding procedures.<sup>18</sup>

The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid amount and additional amounts calculated using the minimum acceptable bid amount and the bid increment percentage. We will round the results using our standard rounding procedures.<sup>19</sup> The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded — *e.g.*, if the increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) \* (1 + 0.10), rounded, or (minimum acceptable bid amount) \* 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) \* 1.30, rounded; etc. Note that the bid increment percentage need not be the same as the minimum acceptable bid percentage.

In the case of a construction permit for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the construction permit.<sup>20</sup>

For Auction No. 62, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent and a bid increment percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit, and additional acceptable bid amounts for a construction permit will be approximately 10–80 percent greater (in intervals of 10 percent) than the minimum acceptable bid amount for the construction permit.

The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, and the bid increment percentage if it determines that circumstances so dictate. The Bureaus will do so by announcement in the FCC Auction System during the auction. We seek comment on these proposals.

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<sup>17</sup> Bidders must have sufficient eligibility to place a bid on the particular construction permit. *See* Section I.B. “Upfront Payments and Bidding Eligibility,” above.

<sup>18</sup> Results are rounded using our standard rounding procedure: results above \$10,000 are rounded to the nearest \$1,000; results below \$10,000 but above \$1,000 are rounded to the nearest \$100; and results below \$1,000 are rounded to the nearest \$10.

<sup>19</sup> *See* note 14, above.

<sup>20</sup> *See* Section II.E. “Information Regarding Bid Withdrawal and Bid Removal,” below.

#### **D. Provisionally Winning Bids**

At the end of a bidding round, a provisionally winning bid amount for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids), we propose to use a random number generator to select a single provisionally winning bid from among the tied bids. If the auction were to end with no higher bids being placed for that construction permit, the winning bidder would be the one that placed the selected provisionally winning bid. However, the remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn.<sup>21</sup> Bidders are reminded that provisionally winning bids confer credit for activity.<sup>22</sup>

#### **E. Information Regarding Bid Withdrawal and Bid Removal**

For Auction No. 62, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively “unsubmit” any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

A bidder may withdraw its provisionally winning bids using the “withdraw bids” function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission rules.<sup>23</sup> We seek comment on these bid removal and bid withdrawal procedures.

In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and construction permits and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureaus, therefore, have discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureaus should assertively exercise their discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular construction permit if the Bureaus find that a bidder is abusing the Commission’s bid withdrawal procedures.<sup>24</sup>

Applying this reasoning, we propose to limit each bidder in Auction No. 62 to withdrawing provisionally winning bids in no more than one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The round in which withdrawals may be used will be at the bidder’s discretion;

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<sup>21</sup> *Id.*

<sup>22</sup> *See* Section I.C. “Activity Rules,” above.

<sup>23</sup> 47 C.F.R. §§ 1.2104(g), 1.2109.

<sup>24</sup> *Part 1 Third Report and Order*, 13 FCC Rcd at 460 ¶ 150.

withdrawals otherwise must be in accordance with the Commission's rules.<sup>25</sup> There is no limit on the number of provisionally winning bids that may be withdrawn in the round in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

#### **F. Stopping Rule**

The Bureaus have discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time."<sup>26</sup> For Auction No. 62, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits.

Bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or places any withdrawals. Thus, unless circumstances dictate otherwise, bidding will remain open on all construction permits until bidding stops on every construction permit.

However, the Bureaus propose to retain the discretion to exercise any of the following options during Auction No. 62:

1. Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, places a withdrawal or submits any new bids on any construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule. The Bureaus further seek comment on whether this modified stopping rule should be used at any time or only in stage two of the auction.
2. Keep the auction open even if no bidder submits any new bids, applies a waiver or places any withdrawals. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.
3. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) and the auction will close.

The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the minimum acceptable bid percentage for the limited number of construction permits on which there is still a high level of bidding activity. We seek comment on these proposals.

### **III. DUE DILIGENCE**

Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. **The FCC makes**

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<sup>25</sup> See 47 C.F.R. § 1.2104(g).

<sup>26</sup> 47 C.F.R. § 1.2104(e).

**no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific *Report and Order* amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid.<sup>27</sup> *Reports and Orders* adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements.<sup>28</sup> Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. **Applicants are strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the Commission's rules regarding the National Environmental Policy Act.**<sup>29</sup>

Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 62 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 62 are strongly encouraged to continue such research during the auction.

#### IV. CONCLUSION

Comments are due on or before April 29, 2005, and reply comments are due on or before May 6, 2005. All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission. Parties who file by paper must file an original and four copies of each filing. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, DC 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U. S. Postal Service mail.<sup>30</sup> The Bureaus also require that all comments and reply comments be filed electronically to the following address: [auktion62@fcc.gov](mailto:auktion62@fcc.gov).<sup>31</sup> The electronic mail containing the comments or reply comments must include a subject or caption referring to "Auction No. 62 Comments" and the name of the commenting party. The Bureaus request that parties format any attachments to electronic mail as Adobe<sup>®</sup> Acrobat<sup>®</sup> (pdf) or Microsoft<sup>®</sup> Word documents. Copies of comments and reply comments will be available for public inspection between 8:00 a.m. and 4:30 p.m. Monday through Thursday or 8:00 a.m. to 11:30 a.m. on Friday in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554, and will also be posted on the web page for Auction No. 62 at <http://wireless.fcc.gov/auktions/62>.

<sup>27</sup> See 47 C.F.R. § 73.202.

<sup>28</sup> See, e.g., *Charlotte Amalie, Frederiksted, and Christiansted, U.S. Virgin Islands*, 19 FCC Rcd 30 (MB 2004); *Cheyenne, Wyoming and Gering, Nebraska*, 15 FCC Rcd 7528 (MMB 2000); *Circleville, Ohio*, 9 F.C.C.2d 159 (1967).

<sup>29</sup> 47 C.F.R. Chapter 1, Part 1, Subpart I.

<sup>30</sup> The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U. S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton, Drive, Capitol Heights, MD 20743.

<sup>31</sup> Comments and reply comments in response to this Public Notice may not be filed using the Commission's Electronic Comment Filing System, which is used for the Commission's docketed rulemaking proceedings.

This proceeding has been designated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>32</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.<sup>33</sup> Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission’s rules.<sup>34</sup>

For further information concerning this proceeding, contact:

**Audio Services Division, Media Bureau**

For service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700

**Auctions and Spectrum Access Division, Wireless Telecommunications Bureau**

For legal questions: Howard Davenport at (202) 418-0660

For general auction questions: Jeff Crooks at (202) 418-0660 or Linda Sanderson at (717) 338-2888

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<sup>32</sup> 47 C.F.R. §§ 1.1200(a), 1.1206.

<sup>33</sup> 47 C.F.R. § 1.1206(b).

<sup>34</sup> *Id.*